

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BRUNO ROBERTO,

Plaintiff,

v.

BCI COCA-COLA BOTTLING
COMPANY OF LOS ANGELES, *et al.*,

Defendants.

CASE NO. C18-0084-JCC

ORDER

Pursuant to the parties' stipulated motion for a protective order (Dkt. No. 12), the Court
ORDERS as follows:

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. Such does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

1 2. “CONFIDENTIAL” MATERIAL

2 “Confidential” material shall include the following documents and tangible things
3 produced or otherwise exchanged: 1) proprietary data, know-how, trade secrets, competitively
4 sensitive information, copyrighted material, or other valuable commercial information; 2)
5 personal identifying information, such as a home address, a personal telephone number, a social
6 security number, or similar information; 3) disclosures of medical records or quotes from
7 medical records that contain confidential medical information or its diagnosis, care, treatment, or
8 prognosis; 4) any employment records; 5) financial information such as W-2s, tax returns, or
9 other similar information; 6) information and documents that a party to the lawsuit is legally or
10 contractually required to keep confidential; and 7) information obtained by a party from third
11 parties pursuant to agreements of confidentiality and/or nondisclosure to the extent considered
12 confidential by law, that is revealed to another party during a deposition, in a document, in an
13 interrogatory answer, through the production of tangible evidence or otherwise, shall be
14 considered “Confidential Information,” if so designated in writing or orally by the party
15 revealing the information or by the party whose information is so revealed.

16 3. SCOPE

17 The protections conferred by this agreement cover not only confidential material (as
18 defined above), but also (1) any information copied or extracted from confidential material; (2)
19 all copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony,
20 conversations, or presentations by parties or their counsel that might reveal confidential material.
21 However, the protections conferred by this agreement do not cover information that is in the
22 public domain.

23 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

24 4.1 Basic Principles. A receiving party may use confidential material that is disclosed
25 or produced by another party or by a non-party in connection with this case only for prosecuting,
26 defending, or attempting to settle this litigation. Confidential material may be disclosed only to

1 the categories of persons and under the conditions described in this agreement. Confidential
2 material must be stored and maintained by a receiving party at a location and in a secure manner
3 that ensures that access is limited to the persons authorized under this agreement.

4 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
5 ordered by the Court or permitted in writing by the designating party, a receiving party may
6 disclose any confidential material only to:

7 (a) The receiving party’s counsel of record in this action, as well as
8 employees of counsel to whom it is reasonably necessary to disclose the information for this
9 litigation;

10 (b) The officers, directors, and employees (including in-house counsel) of the
11 receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties
12 agree that a particular document or material produced is for “Attorney’s Eyes Only” and is so
13 designated;

14 (c) Experts and consultants to whom disclosure is reasonably necessary for
15 this litigation and who have signed the “Acknowledgment and Agreement to Be Bound,”
16 enclosed herewith as **Exhibit A**;

17 (d) The Court, court personnel, and court reporters and their staff;

18 (e) Copy or imaging services retained by counsel to assist in the duplication
19 of confidential material, provided that counsel for the party retaining the copy or imaging service
20 instructs the service not to disclose any confidential material to third parties and to immediately
21 return all originals and copies of any confidential material;

22 (f) During their depositions, witnesses in the action to whom disclosure is
23 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound”
24 (**Exhibit A**), unless otherwise agreed by the designating party or ordered by the Court. Pages of
25 transcribed deposition testimony or exhibits to depositions that reveal confidential material must
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1 be separately bound by the court reporter and may not be disclosed to anyone except as permitted
2 under this agreement;

3 (g) Any mediator or arbitrator engaged by the parties in connection with this
4 litigation; or

5 (h) The author or recipient of a document containing the information or a
6 custodian or other person who otherwise possessed or knew the information.

7 4.3 Filing Confidential Material. Before filing confidential material or discussing or
8 referencing such material in court filings, the filing party shall confer with the designating party
9 to determine whether the designating party will remove the confidential designation, whether the
10 document can be redacted, or whether a motion to seal or stipulation and proposed order is
11 warranted.

12 5. DESIGNATING PROTECTED MATERIAL

13 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party
14 or non-party that designates information or items for protection under this agreement must take
15 care to limit any such designation to specific material that qualifies under the appropriate
16 standards. The designating party must designate for protection only those parts of material,
17 documents, items, or oral or written communications that qualify, so that other portions of the
18 material, documents, items, or communications for which protection is not warranted are not
19 swept unjustifiably within the ambit of this agreement.

20 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
21 shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to
22 unnecessarily encumber or delay the case development process or to impose unnecessary
23 expenses and burdens on other parties) expose the designating party to sanctions.

24 If it comes to a designating party's attention that information or items that it designated
25 for protection do not qualify for protection, the designating party must promptly notify all other
26 parties that it is withdrawing the mistaken designation.

1 5.2 Manner and Timing of Designations. Except as otherwise provided in this
2 agreement (see, *e.g.*, section 5.2(a) below), or as otherwise stipulated or ordered, disclosure or
3 discovery material that qualifies for protection under this agreement must be clearly so
4 designated before or when the material is disclosed or produced.

5 (a) Information in documentary form: Except as otherwise provided in this
6 agreement (*e.g.*, paper or electronic documents and deposition exhibits, but excluding transcripts
7 of depositions or other pretrial or trial proceedings), the designating party must affix the word
8 “CONFIDENTIAL” to each page that contains confidential material. If only a portion or portions
9 of the material on a page qualifies for protection, the producing party also must clearly identify
10 the protected portion(s) (*e.g.*, by making appropriate markings in the margins).

11 (b) Testimony given in deposition or in other pretrial proceedings: the parties
12 and any participating non-parties must identify on the record, during the deposition or other
13 pretrial proceeding, all protected testimony, without prejudice to their right to so designate other
14 testimony after reviewing the transcript. Any party or non-party may, within fifteen days after
15 receiving the transcript of the deposition or other pretrial proceeding, designate portions of the
16 transcript, or exhibits thereto, as confidential. If a party or non-party desires to protect
17 confidential information at trial, the issue should be addressed during the pre-trial conference.

18 (c) Other tangible items: the producing party must affix in a prominent place
19 on the exterior of the container or containers in which the information or item is stored the word
20 “CONFIDENTIAL.” If only a portion or portions of the information or item warrant protection,
21 the producing party, to the extent practicable, shall identify the protected portion(s).

22 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
23 designate qualified information or items does not, standing alone, waive the designating party’s
24 right to secure protection under this agreement for such material. Upon timely correction of a
25 designation, the receiving party must make reasonable efforts to ensure that the material is
26 treated in accordance with the provisions of this agreement.

1 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

2 6.1 Timing of Challenges. Any party or non-party may challenge a designation of
3 confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality
4 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
5 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to
6 challenge a confidentiality designation by electing not to mount a challenge promptly after the
7 original designation is disclosed.

8 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute
9 regarding confidential designations without Court involvement. Any motion regarding
10 confidential designations or for a protective order must include a certification, in the motion or in
11 a declaration or affidavit, that the movant has engaged in a good faith meet and confer
12 conference with other affected parties in an effort to resolve the dispute without Court action.
13 The certification must list the date, manner, and participants to the conference. A good faith
14 effort to confer requires a face-to-face meeting or a telephone conference.

15 6.3 Judicial Intervention. If the parties cannot resolve a challenge without Court
16 intervention, the designating party may file and serve a motion to retain confidentiality. The
17 burden of persuasion in any such motion shall be on the designating party. Frivolous challenges,
18 and those made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and
19 burdens on other parties) may expose the challenging party to sanctions. All parties shall
20 continue to maintain the material in question as confidential until the Court rules on the
21 challenge.

22 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
23 LITIGATION

24 If a party is served with a subpoena or a court order issued in other litigation that compels
25 disclosure of any information or items designated in this action as "CONFIDENTIAL," that
26 party must:

1 (a) Promptly notify the designating party in writing and include a copy of the
2 subpoena or court order;

3 (b) Promptly notify in writing the party who caused the subpoena or order to
4 issue in the other litigation that some or all of the material covered by the subpoena or order is
5 subject to this agreement. Such notification shall include a copy of this agreement; and

6 (c) Cooperate with respect to all reasonable procedures sought to be pursued
7 by the designating party whose confidential material may be affected.

8 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

9 If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential
10 material to any person or in any circumstance not authorized under this agreement, the receiving
11 party must immediately (a) notify in writing the designating party of the unauthorized
12 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material,
13 (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of
14 this agreement, and (d) request that such person or persons execute the “Acknowledgment and
15 Agreement to Be Bound,” that is enclosed herewith as Exhibit A.

16 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
17 MATERIAL

18 When a producing party gives notice to receiving parties that certain inadvertently
19 produced material is subject to a claim of privilege or other protection, the obligations of the
20 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
21 provision is not intended to modify whatever procedure may be established in an e-discovery
22 order or agreement that provides for production without prior privilege review. The parties agree
23 to the entry of a non-waiver order under Federal Rule of Evidence 502(d) as set forth herein.

24 10. NON TERMINATION AND RETURN OF DOCUMENTS

25 Within 60 days after the termination of this action, including all appeals, each receiving
26 party must return all confidential material to the producing party, including all copies, extracts

1 and summaries thereof. Alternatively, the parties may agree upon appropriate methods of
2 destruction.

3 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
4 documents filed with the Court, trial, deposition, and hearing transcripts, correspondence,
5 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert
6 work product, even if such materials contain confidential material.

7 The confidentiality obligations imposed by this agreement shall remain in effect until a
8 designating party agrees otherwise in writing or a court orders otherwise.

9 DATED this 13th day of August 2018.

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A handwritten signature in black ink, reading "John C. Coughenour", is written over a horizontal line.

John C. Coughenour
UNITED STATES DISTRICT JUDGE

I, _____ [print or type], of _____, declare under penalty of perjury that I have read and understand the Stipulated Protective Order issued by the United States District Court for the Western District of Washington on this date, _____, in the case of *Bruno Robert v. BCI Coca-Cola Bottling Company of Los Angeles, et al.*, No. C:18-cv-00084-JCC (W.D. Wash.).

I agree to comply with and to be bound by all the terms of this Stipulated Protective Order, and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order. I further agree to submit to the jurisdiction of the United States District Court for the Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

Date: _____

City and State where signed: _____

Printed name: _____

Signature: _____